



ORIGINAL

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS

SEP 11 2003

DAVID J. MALAND, CLERK
BY
DEPUTY *[Signature]*

IN THE UNITED STATES DISTRICT COURT

TEXARKANA DIVISION

EQUAL EMPLOYMENT OPPORTUNITY)
COMMISSION,)
Plaintiff,)
and)
MARCIA MITCHELL,)
Intervenor)
v.)
WAL-MART STORES, INC.,)
Defendant.)

CIVIL ACTION NO.

5:02-CV-206

CONSENT DECREE

This Consent Decree is made and entered into between the Plaintiff, the Equal Employment Opportunity Commission ("EEOC"), and the Defendant, Wal-Mart Stores, Inc. (hereinafter collectively referred to as "the parties").

On September 26, 2002, the Equal Employment Opportunity Commission instituted a lawsuit in the United States District Court for the Eastern District of Texas, Texarkana Division, Civil Action Number 5:02-CV-206 against Defendant, alleging that the Defendant violated Title VII of the Civil Rights Act of 1964 (Title VII) when it subjected Marcia Mitchell to a sexually hostile work environment because of her sex (female), transferred her to a less desirable position in retaliation for complaining of the harassment, and constructively discharged her from her

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employment.

The parties hereto desire to compromise and settle the differences embodied in the aforementioned lawsuit, and intend that the terms and conditions be set forth in this Consent Decree.

NOW, THEREFORE, in consideration of the mutual promises and agreements set forth herein, the sufficiency of which is hereby acknowledged, the parties agree as follows, the court finds appropriate, and therefore, it is ORDERED, ADJUDGED AND DECREED that:

1. This Court has jurisdiction to enforce the provisions set forth in this Consent Decree.
2. This Consent Decree resolves all issues, including all like and related issues, raised in EEOC Charge Number 310 A1 1192. This Decree further resolves all issues in the Complaint filed by the Commission in this civil action. The Commission does not waive processing or litigating charges or cases other than the above referenced charges and Complaint. It is understood that this Consent Decree does not constitute an admission by Defendant of any violation of Title VII of the Civil Rights Act of 1964, as amended.
3. Defendant agrees not to discriminate on the basis of gender with respect to recruitment, hiring, termination, or any other employment action, and Defendant further agrees not to retaliate in any way against any person because of opposition to any practice declared unlawful under Title VII or because of the filing of a charge, giving testimony, or assisting or participating in any manner in any investigation, proceeding or hearing.

4. Defendant agrees to post the Notice appended hereto as Attachment "A" on the Associate Safety Center bulletin board, located by the time clock, at its Texarkana, Texas, facility within 10 days after the entry of this Consent Decree. Defendant will report to the EEOC that it has complied with this requirement within 30 days after posting the notice.
5. For each year that this Consent Decree is in effect, Defendant agrees to conduct annual training for all Management and Hourly Supervisors of Defendant's Texarkana, Texas, facility, advising them of the requirements and prohibitions of Title VII of the Civil Rights Act of 1964. The training will inform employees of the complaint procedure for individuals who believe that they are being discriminated against by Wal-Mart Stores, Inc. This annual training will also advise managers and supervisors of the consequences imposed upon Wal-Mart Stores, Inc. for violating Title VII. The training will also include a specific discussion or instruction relating to the issue of sexual harassment, and Wal-Mart's policies regarding the reporting requirements regarding complaints of sexual harassment and the appropriate investigation of sex harassment claims. The training shall be at least two (2) hours in duration. No less than 10 days before the training is conducted, Defendant agrees to give written notice to the EEOC as to the date and location of the training, the name and qualifications of the person providing the training and the substance of the training. All materials used in conjunction with the training shall be forwarded to the EEOC. Within 20

days following the training, Defendant shall submit to the EEOC confirmation that the training was conducted, and a list of attendees.

6. Defendant agrees to pay Marcia Mitchell the gross sum of \$150,000 in full and final settlement of the claims asserted in this dispute. The amount of \$10,000 represents back pay under Title VII of the Civil Rights Act of 1991 for the claim asserted by the EEOC on behalf of Charging Party Marcia Mitchell. The check shall be mailed within 10 days after entry of this Consent Decree.
7. Defendant agrees to provide to each hourly employee and each new hire at its Texarkana, Texas, facility for the pendency of this Consent Decree a copy of Wal-Mart's Associate Handbook containing complaint procedures for reporting claims of sexual harassment.
8. Defendant agrees to provide to each supervisory employee at its Texarkana, Texas, facility a copy of Wal-Mart's procedures for reporting and investigating claims of sexual harassment.
9. Defendant agrees it will place in Deshun White's permanent investigative file a memo stating that Wal-Mart has received two complaints alleging that he has sexually harassed female employees, and that any further such complaints in the future will be fully investigated according to Wal-Mart procedures and, should there be evidence to support such claim(s), he shall be subject to disciplinary action, up to and including termination. Defendant will also place in Deshun White's permanent personnel file a separate document containing the following

statement:

Any review of the personnel file of DeShun White to be complete must also include a review of the confidential files maintained by his Store Manager and District Manager.

10. As to each report to management alleging unwelcome sexual conduct, including verbal conduct, by Deshun White during the pendency of this Consent Decree, Wal-Mart agrees to provide notification of the complaint to the Dallas District Office of the EEOC,. The notification shall include the nature of the complaint, the steps taken during the investigation, if any, and what, if any, disciplinary action was taken.
11. Defendant agrees to report to the EEOC within 30 days of entry of this Consent Decree regarding its compliance with the arrangements set forth in paragraphs 4 through 6, above.. All reports to the EEOC required by this Decree shall be sent to Devika S. Dubey, Senior Trial Attorney, 207 S. Houston Street, 3rd Floor, Dallas, Texas 75202.
12. If Defendant fails to tender payment or otherwise fails to timely comply with the terms of paragraph 6 above, Defendant shall:
 - a. Pay interest at the rate calculated pursuant to 26 U.S.C. § 6621(b) on any untimely or unpaid amounts; and
 - b. Bear any additional costs incurred by the EEOC caused by the non-compliance or delay of the Defendant.
13. The parties agree to bear their own costs associated with this action, including

attorney's fees.

14. The Commission has the right to specifically enforce the terms of this Decree. Nothing in this Consent Decree can preclude further actions by the EEOC or any other person to remedy any other alleged violations of Title VII by Defendant.
15. The effective date of this Decree shall be the date upon which it is signed for approval by the Court.
16. The term of this Decree shall be for two (2) years from the effective date. The Court shall retain jurisdiction to enforce the terms of this Decree until the expiration of the term of the Consent Decree.

APPROVED AS TO FORM AND CONTENT:

FOR THE PLAINTIFF,
EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION:

Toby W. Costas

TOBY W. COSTAS
SUPERVISORY TRIAL ATTORNEY
Texas State Bar No. 04855720

DSD

DEVIKA S. DUBEY
Senior Trial Attorney
Hawaii State Bar No. 00599

FOR THE DEFENDANT,
WAL-MART STORES, INC.

Charlyn Janell Porter

Representative for Defendant
WAL-MART STORES, INC.

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NANCY L. WATERS
Texas State Bar No. 00787352
GEARY, PORTER & DONOVAN, P.C.
16475 Dallas Parkway, Suite 500
Addison, Texas 75001

SO ORDERED, ADJUDGED AND DECREED this 11th day of Sept, 2003.

David Folsom
THE HONORABLE DAVID FOLSOM
UNITED STATES DISTRICT JUDGE

**NOTICE AS REQUIRED UNDER TITLE VII
OF THE CIVIL RIGHTS ACT OF 1964, AS AMENDED**

This NOTICE is being posted as part of a Consent Decree between the Wal-Mart Supercenter in Texarkana, Texas, and the United States Equal Employment Opportunity Commission.

1. Federal Law requires that there be no discrimination against or harassment of any employee or applicant for employment because of that person's race, color, religion, sex, national origin, age or disability with respect to hiring, compensation, promotion, discharge or other terms, conditions or privileges of employment.
2. Wal-Mart Stores, Inc. strongly supports and will comply with such Federal Law in all aspects and it will not take any action against employees because they have exercised their rights under the law by filing charges with the United States Equal Employment Opportunity Commission.
3. Wal-Mart Stores, Inc. will not tolerate sexual harassment, sex-based harassment and/or discrimination or retaliation in the workplace. Employees are now put on notice that the first violation of the company's sexual harassment policy will subject an employee found to have violated the policy to disciplinary action.
4. Employees may report violations of the company's sexual harassment policy to, Kelly Graham, Regional Personnel Manager, Wal-Mart Stores Inc. (800-925-6278) and/or the Dallas District Office of the United States Equal Employment Opportunity Commission, 207 South Houston Street, Third Floor, Dallas, Texas 75202 (214-655-3355).
5. This NOTICE will remain posted until September 1, 2006, as provided in the Consent Decree.

Attachment "A"